

Clerk's Office  
Filed Date: 4/18/23

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT  
EASTERN DISTRICT OF  
NEW YORK  
BROOKLYN OFFICE

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AGRICULTURAL LOGISTICS LLC,

Plaintiff,

**ORDER**

22-CV-873 (MKB) (JMW)

v.

SURVIVAL TRANSPORTATION INC. and  
HECTOR WENCY SEGARRA RIVERA,

Defendants.  
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MARGO K. BRODIE, United States District Judge:

Plaintiff Agricultural Logistics LLC commenced the above-captioned action against Defendants Survival Transportation Inc. and Hector Wency Segarra Rivera, alleging violation of 49 U.S.C. § 14706 (the “Carmack Amendment”) and breach of contract under state law. (*See* Compl., Docket Entry No. 1.) Defendants failed to appear or otherwise respond to the action, and the Clerk of Court noticed a default against Defendants on November 15, 2022. (Clerk’s Entry of Default, Docket Entry No. 18.) On December 19, 2022, Plaintiff moved for a default judgment, (Pl.’s Mot. for Default J. (“Pl.’s Mot.”), Docket Entry No. 19), and on December 14, 2022, the Court referred Plaintiff’s motion to Magistrate Judge James M. Wicks for a report and recommendation, (Order dated Dec. 14, 2022).

By report and recommendation dated December 19, 2022, Judge Wicks recommended that the Court deny Plaintiff’s motion for default judgment without prejudice because: (1) Plaintiff did not file a memorandum of law in support of its motion as required by E.D.N.Y. Local Rule 7.1(a)(2); (2) Plaintiff did not file an affidavit pursuant to the Servicemembers Civil Relief Act; (3) Plaintiff provided only redacted attorney billing records; and (4) Plaintiff did not

provide autobiographical information for the attorneys and staff listed in the billing records (the “R&R”). (R&R 1–3, Docket Entry No. 21.)

No objections to the R&R have been filed and the time for doing so has passed.

## **I. Discussion**

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate[] [judge’s] report and recommendation operates as a waiver of further judicial review of the magistrate[] [judge’s] decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (same); *Almonte v. Suffolk Cnty.*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object.’” (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985))); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766))).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1).

## **II. Conclusion**

For the foregoing reasons, the Court adopts the R&R and denies without prejudice Plaintiff's motion for a default judgment. Plaintiff is directed to serve copies of this Order upon Defendants at their last known addresses and to file proof of service with the Court.

Dated: April 18, 2023  
Brooklyn, New York

SO ORDERED:

s/ MKB  
MARGO K. BRODIE  
United States District Judge